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CONCORD, N.H.

May 5, 1958

Honorable Ray E. Tarbox
Chairman, State Liquor Commission
Concord, New Hampshire

Dear Mr. Tarbox:

Under date of March 24, 1958, you referred to us a letter addressed to the Commission on March 19, 1958 by counsel for certain wholesale permittees, and asked the views of this office upon the question raised in his communication.

The question deals with the effect of RSA 181:9-a (supp), and reduced to its simplest terms relates to a corporation which had as its sole stockholders at the time of the enactment of the statute cited persons who had not been residents of the State for three consecutive years immediately prior to March 15, 1957. At the present time it is contemplated that the corporation will issue additional shares to another person or persons who are not residents of New Hampshire. The issue then becomes whether the wholesaler's permit held by the corporation on March 15, 1957, and currently in existence, may be renewed at its expiration date if the action contemplated shall by then have been taken.

We answer in the negative.

RSA 181:9-a, effective March 15, 1957, reads as follows:

"Wholesaler's Permit - Restrictions on Holding of. No person shall through stock ownership, interlocking stock ownership, interlocking directors, or otherwise, have an interest or control, either direct or indirect, in the business of the holder of a wholesaler's permit unless he had been a resident of the state for three consecutive years immediately prior thereto. The provisions of this section shall not apply to the renewal of existing wholesale permits by the holders thereof at the time of the passage of this act."

See letter of May 19
re forms prepared
to comply with this
opinion

(April 24 opinion -
attached hereto - reviewed)

The context of the second sentence raises the question involved in N.H. Wholesale Beverage Assoc. et al v. N. H. State Liquor Commission, et al, 100 N.H. 5 (1955), namely, whether or not "by the holders thereof" in the case of corporate licensees means that the Commission is not to concern itself with stock ownership. This has been expressly disapproved by the New Hampshire Supreme Court in the following language in the above-entitled case:

"In applying this limitation to a corporation, the Commission has treated the corporation as a separate entity, without regard to whether the person or persons who own or control it are the owners or in control of other corporate off-sale permittees. The plaintiffs contend that the same person or group of persons have thereby been permitted to hold 'directly or indirectly . . . more than two off-sale permits at one time' in violation of s. 76.

"The fiction that the corporation is a being independent of those who are associated as its stockholders is not favored in this state.' Bowditch v. Company, 76 N.H. 351, 354; Dow v. Northern Railroad, 67 N.H. 1. It is to be disregarded 'when justice demands it.' Lund Company v. Rolfe, 93 N.H. 280, 283. In this case, it is not entitled to recognition as the basis for issuance of off-sale permits if a means is thereby provided of avoiding a clear legislative purpose."

The excepting clause permits renewal of the existing permits in situations wherein interests in the business of the holder remain identical or have not passed to persons who offend the general legislative requirement set forth in the first sentence of this section.

A review of the legislative history preceding adoption of this act confirms the foregoing. Had the Legislature intended this limitation to exclude all permits in existence upon the effective date it would have ended the second sentence by a period after the word "permits".

To construe s. 9-a, supra, in any other manner would be to permit to nonresident interests a share in the ownership of a permittee acquired subsequent to the effective date of pronouncement of a legislative policy that stock ownership in such permittees shall not be held by nonresidents. This is exactly what the legislative policy is designed to prevent.

The advices to you by letter of April 24 on the same subject are rescinded herewith.

Sincerely,

Louis C. Wyman
Attorney General